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No. 96-250

IN THE
Supreme Court of the United States
OCTOBER TERM, 1996

KHD DEUTZ OF AMERICA CORPORATION,
Petitioner,
v.
RONALD STEWART, DAVID KIRCHOFF, DARRELL L. HOWARD, LOUIS KUBITSCHEK, JOHN TUCKNESS AND RONALD KELTNER, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

COUNTERSTATEMENT OF THE CASE

In June of 1991, Petitioner KHD Deutz of America Corporation (the "Company") unilaterally implemented a reduction in the collectively-bargained health benefits provided to its retired employees. Respondents, a group of Company retirees, brought this class action in July of 1991 under both § 301 of the Labor Management Relations Act ("LMRA") and § 502 of the Employee Retirement Income and Security Act ("ERISA"). The retirees' complaint (a) alleged that the reduction in their health benefits violated the terms of the governing collective bargaining agreements; and (b) sought both injunctive relief and "monetary damages to restore all affected class mem-

bers to the position in which they would have been but for the defendant's contractual and statutory violations." Petitioner's Appendix ("Pet. App.") at 45.[1]

The trial court denied two motions by the retirees for preliminary injunctive relief, and also struck the retirees' demand for a jury trial on their LMRA § 301 claims for breach of contract damages.[2] The Eleventh Circuit allowed an interlocutory appeal on the jury trial question, and reversed in a 3-0 panel decision.

In reversing, the Eleventh Circuit expressly "join[ed]" the holding of the Seventh Circuit in *Senn v. United Dominion Indus.*, 951 F.2d 806 (7th Cir. 1992), *cert. denied*, 509 U.S. 903 (1993), that "plaintiffs are entitled to a jury trial in hybrid LMRA/ERISA actions." Pet. App. at 14. And, in so doing, the Eleventh Circuit tracked the Seventh Circuit's rationale in *Senn*.

First, the Eleventh Circuit found that "monetary relief sought pursuant to section 301 of the LMRA is legal in nature," thus entitling the retirees to a jury trial under the Seventh Amendment on their LMRA § 301 damages claims. Pet. App. at 11; *accord Senn*, 951 F.2d at 813.

Second, the Eleventh Circuit found that the retirees did not forfeit their constitutional right to a jury trial on their legal LMRA § 301 damages claims by joining those claims with equitable ERISA claims. Pet. App. at 11-12; *accord Senn*, 951 F.2d at 813-14.

The Eleventh Circuit also rejected the Company's alternative argument that "the comprehensive scheme of ERISA warrants the denial of the retirees' right to a

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[1] The retirees also prayed for *extra*-contractual damages, *see* Pet. App. at 46, which were held to be unavailable by the trial court and are not at issue here.

[2] Section 301 provides, in pertinent part, that "[s]uits *for violation of contracts* between an employer and a labor organization . . . may be brought in any district court of the United States having jurisdiction of the parties . . . ." 29 U.S.C. § 185 (emphasis added).

jury trial on their section 301 claim." Pet. App. at 13. The court of appeals did so because "section 514(d) of ERISA explicitly saves federal causes of action including section 301 of the LMRA," and because "the Federal Rules of Civil Procedure . . . allow liberal joinder of legal and equitable actions, and the Declaratory Judgment Act . . . preserves the right to a jury trial to both parties." *Id.* at 13-14 (footnote and citations omitted).

ARGUMENT

1. The decision below faithfully follows this Court's jury trial precedents and is in accord with the one other court of appeals' decision on point. There being no basis for plenary consideration the *certiorari* petition should be denied.

a. The retirees' rights and remedies under LMRA § 301 are plainly of a legal nature. This Court has made it plain that a claim under LMRA § 301 for violation of a collective bargaining agreement "is comparable to a breach of contract claim" and that such a claim therefore presents "a legal issue." *Chauffeurs, Teamsters & Helpers, Local 391 v. Terry*, 494 U.S. 558, 570 (1990); *see also UAW v. Hoosier Cardinal Corp.*, 383 U.S. 696, 705 n.7 (1966). And, the remedy that the retirees seek under LMRA § 301—"monetary damages to restore all affected class members to the position in which they would have been but for" the Company's violation of the governing collective bargaining agreements—is the classic *legal* remedy for breach of contract. *See Scott v. Neely*, 140 U.S. 106, 110 (1891); *Miller v. Robertson*, 266 U.S. 243, 257 (1924); Restatement (Second) of Contracts § 344, cmt. a (1981).

In short, what this Court has said with respect to a damages claim for breach of a contract for exclusive use of a trademark is equally on point with respect to the LMRA § 301 damages claim asserted by the retirees here: "[I]t would be difficult to conceive of an action of

a more traditionally legal character." *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 477 (1962). It follows that the retirees have a Seventh Amendment right to a jury trial on their LMRA § 301 damages claims. *See, e.g., Curtis v. Loether*, 415 U.S. 189, 194 (1974); *Tull v. United States*, 481 U.S. 412, 417 (1987); *Terry*, 494 U.S. at 564-65.

b. It is equally well-settled that

> if [a] legal claim is joined with an equitable claim, the right to jury trial on the legal claim, including all issues common to both claims, remains intact. The right cannot be abridged by characterizing the legal claim as "incidental" to the equitable relief sought.

Curtis v. Loether, 415 U.S. at 196 n.11; *accord, e.g., Tull*, 481 U.S. at 425; *Ross v. Bernhard*, 396 U.S. 531, 537-38 (1970); *Dairy Queen*, 369 U.S. at 470-73.

On this ground, the court below was unquestionably correct in holding that the retirees did not forfeit their constitutional right to a jury trial on their legal LMRA § 301 damages claims by joining those claims with equitable ERISA claims.

2. The Company posits a conflict between the decision below and the contemporaneous decision of the Sixth Circuit in *Golden v. Kelsey-Hayes Co.*, 73 F.3d 648 (6th Cir. 1996), *pet. for cert. pending*, No. 95-1662 (Apr. 17, 1996). *See* Petition ("Pet.") at 7-9. There is no such conflict.

The 2-1 panel decision in *Golden* rests on a rule that by its terms has *no* application here. There, less than three months after the alleged contractual breach, the trial court granted a motion for preliminary injunctive relief that ended the breach and prevented any further monetary loss to the plaintiffs. Thus, the monetary relief at issue in *Golden* was "for the amount of loss the[] [plaintiffs] incurred between January 1 and March 17." 73 F.3d at

661. In that context the Sixth Circuit ruled that "[s]uch damages are exactly the type of monetary relief that courts, and the *Restatement*, envision as equitable relief; they are incidental to the grant of equitable relief, yet are necessary to afford complete relief." *Id.*

That limited ruling has no conceivable application to this case. Here, the retirees were denied preliminary injunctive relief by the trial court, and more than five years of breach of contract damages have accumulated in the meantime. Thus, even on the *Golden* majority's rationale, it is impossible to characterize the retirees' legal claim for damages under LMRA § 301 as merely "incidental" to their equitable ERISA claims. Indeed, as the dissenting judge in *Golden* observed without any objection from the *Golden* majority, "if there had been no preliminary injunction, and benefits had been withheld during the pendency of this action[,] then damages would be considerable and the court would have to find a right to trial by jury." *Id.* at 665.

3. The Company also urges as a ground for review that the decision below is erroneous on at least one of two alternative grounds. *See* Pet. App. at 9-25. We have already shown that the decision below follows ineluctably from this Court's decisions. *See supra* pp. 3-4. Not surprisingly, then, the Company's arguments that the court below committed error are without substance.

a. The Company argues first that ERISA displaces LMRA § 301 remedies in circumstances where the remedies available under the two statutes are coterminous, thus leaving plaintiffs who seek to recover unpaid benefits under a collectively-bargained plan with only equitable ERISA claims (and hence no constitutional right to a jury trial). *See* Pet. at 13-20.

There have been numerous "hybrid" cases brought under both LMRA § 301 and ERISA based on the failure of a company to pay collectively-bargained retiree bene-

fits, and *no* court in any of these cases has ever held that ERISA displaces LMRA § 301 remedies in this context. Thus, the Company is forced to patch together a hodgepodge of cases that are not remotely on point in an effort to support its novel "displacement" theory. The short but complete answer to the Company's construct is, as the court below held, that ERISA § 514(d), 29 U.S.C. § 1144(d), "explicitly saves federal causes of action including section 301 of the LMRA." *See supra* pp. 2-3.

b. The Company's alternative argument is that "even if" the retirees' LMRA § 301 remedies are not displaced by ERISA, the retirees' claim for breach of contract damages should be deemed "equitable" on the theory that that claim is " 'incidental to or intertwined with' " the retirees' claim for equitable injunctive relief. *See* Pet. at 20-25 (quoting *Terry*, 494 U.S. at 571).

Here again, *no* court in any "hybrid" LMRA/ERISA action has ever held that a claim for a substantial amount of breach of contract damages (here, more than five years worth) can be deemed "equitable" for Seventh Amendment purposes on the ground that the plaintiff also seeks equitable injunctive relief under ERISA. And, indeed, as the court below observed, any such holding would fly in the face of this Court's longstanding rule that the Seventh Amendment right to a jury trial on a legal claim "cannot be abridged by characterizing the legal claim as 'incidental' to the equitable relief sought." *See supra* p. 4.

The District of Columbia Circuit has supplied a more painstaking analysis of this same point in its recent decision in *Crocker v. Piedmont Aviation, Inc.*, 49 F.3d 735 (D.C. Cir.), *cert. denied*, 116 S. Ct. 180 (1995), upholding the right to a jury trial on a claim for backpay under the Employee Protection Program of the Airline Deregulation Act of 1978.

In *Crocker*, the court began by explaining that this Court's statement in *Terry* that "a monetary award in-

cidental to or intertwined with injunctive relief may be equitable," 494 U.S. at 571, cannot be read as referring "to the relative worth of the back pay and equitable claims at a particular point in the litigation," because "[t]he Court has repeatedly and firmly insisted that the right to a jury trial on a legal claim cannot be extinguished because modern procedural devices have brought it together in the same suit as an equitable claim." 49 F.3d at 748.

The *Crocker* court went on to explain that

> [i]t appears instead that the status of a claim as "intertwined" or "incidental" with injunctive relief depends on the remedial structure of the statutory scheme. The Supreme Court has characterized lost-wage and backpay remedies as equitable when the power to award such amounts was derived from a statutory grant of equitable authority. In *Mitchell v. DeMario Jewelry*, 361 U.S. 288 (1960)—the sole example of intertwining cited by *Terry*—the Court found that § 17 of the Fair Labor Standards Act, 29 U.S.C. § 217, which gave the district courts explicit power to enjoin certain retaliatory discharges, implicitly also gave them power to award whatever supplementary relief was necessary to further the purposes of the statute, including lost wages. The Court characterized this implied power as equitable, not because lost-wage relief inherently sounds in equity, but rather because it arose derivatively from the equitable injunction powers granted by the statute.

Id. (footnote and citations omitted).

The foregoing ground for characterizing a statutory damages claim as "equitable" for Seventh Amendment purposes has no conceivable application to the independent LMRA § 301 damages claim at issue here, which as this Court has recognized is a quintessential *legal* claim. *See supra* pp. 3-4.

CONCLUSION

For the reasons stated, the petition for a writ of *certiorari* should be denied.

Respectfully submitted,

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